

## **REMARKS**

Claims 1, 28, and 33-51 are pending. Claims 2-27 and 29-32 are canceled without prejudice or disclaimer in light of an Election of Species Requirement. In accordance with M.P.E.P. §809.02(a), Applicant believes that the added claims are readable on the Species previously elected by the Applicant.

Reconsideration in light of the amendments and remarks below is respectfully requested and allowance is earnestly solicited. Support for the amendments and new claims may be found throughout the application, and in particularly at page 2, lines 18-22; page 3, lines 1-5; and page 17, lines 18-28.

## **Interview Summary**

Counsel for the Applicant, wishes to thank Examiner Campen for conducting a telephonic interview on July 27<sup>th</sup>, 2009.

The substance of the interview is embodied in the included amendments and remarks below. Examiner and Counsel discussed the 35 U.S.C. §103(a) rejection over Canadian Patent Application Number 2,122,116 naming Hazy (hereinafter, “Hazy”) in view of official notice.

In particular, Counsel noted that the application of office notice as to the use of criterion specified by an entity other than the user is improper because Restriction Requirement dated January 29<sup>th</sup>, 2002 (page 2, item 2) indicated that groups I and II were separately patentable because a person other than the person using the computer display specified the “criterion of interest.” Although Examiner Campen indicated that she believed that previous counsel waived this argument, Counsel disagreed because the previous action failed to formally invoke “official notice” and with respect to restriction requirements the Office is bound

by the rationales expressed in the restriction requirement. In effect, the application of official notice in this Final Office Action would contradict the Office's rationale in Restriction Requirement dated January 29<sup>th</sup>, 2002. Applicant requests reconsideration of the application of official notice. No formal agreement was reached.

Accordingly, amendments have been made to the independent claims as discussed in the interview. The Applicant submits that all of the pending claims are in condition for allowance. If any issues remain that would prevent the allowance of the application, Applicant requests that the Examiner contact the undersigned attorney to resolve the issues.

**Claim Rejections 35 USC §103(a)**

Claims 1, and 28 are rejected as obvious under 35 U.S.C. §103(a) over Hazy in view of official notice. Applicant traverses the rejection.

As the Office is well aware, Applicant is required to seasonably challenge statements by the Office that are not supported on the record. M.P.E.P. §2144.03. Further, it is noted that "official notice" is to be limited to instances where the facts are "capable of instant and unquestionable demonstration as being well-known." M.P.E.P. §2144.03. This is not the present situation. First, in accordance with M.P.E.P. §904 it is presumed that a full search was conducted and this search is indicative of the prior art. The search failed to disclose a reference which would teach or suggest modifying the Hazy reference to achieve the presently recited subject matter in which "a predefined criterion, specified by an entity other than the user." Consequently, the search revealed that the asserted substitution is not well-known and therefore is not entitled to be relied upon in

order to reject the present claimed subject matter. Further, the application of official notice is improper because the Restriction Requirement dated January 29<sup>th</sup>, 2002 specifically indicates that selection of a criterion by, for example, an investment professional, is patentibly different than if a user selected the criterion. Restriction Requirement 1/29/02, page 2, item 2. If the Office is unable to provide such a reference, and is relying on facts based on personal knowledge, Applicant hereby request that such facts be set forth in an affidavit from the Examiner under 37 C.F.R. 1.104(d)(2).

Nevertheless, in the interest of expediting allowance of the subject application and without conceding the propriety of the outstanding rejections, claims 1 and 28 have been amended in accordance with the amendments discussed during the interview.

Claims 33-51 are new and would be allowable based on rationales similar to those discussed with respect to claims 1 and 28 above if the rejection was applied to claims 33-51. Allowance of claims 33-51 is respectfully requested.

### **Conclusion**

All of the claims are in condition for allowance. Accordingly, Applicant requests reconsideration and issuance of a Notice of Allowability. If the Office's next anticipated action is to be anything other than issuance of a Notice of Allowability, Applicant respectfully requests a telephone call for the purpose of scheduling an interview.

Respectfully Submitted,

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